

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDWARD A. MCCARTHY,
PLAINTIFF

Civil Action No:
04-10335-NMG

VS.

MCLANE COMPANY, INC.,
CONSTRUCTION MANAGEMENT
TECHNOLOGY AND
LINCOLN FRANKLIN, LLC.,
DEFENDANTS

VS.

ALL PHASES CORP.
THIRD PARTY DEFENDANT

THIRD PARTY COMPLAINT OF LINCOLN FRANKLIN, LLC

I. PARTIES

1. The plaintiff, Edward McCarthy, is a resident of Dracut, Massachusetts.
2. The defendant Construction Management Technology is a Texas corporation with a principal place of business in Texas.
3. The defendant McLane Company, Inc., is a Texas corporation with a principal place of business in Texas.
4. The defendant/third party plaintiff, Lincoln Franklin, LLC., is a Delaware corporation with a principal place of business in Massachusetts.
5. The third party defendant, All Phases, is a Massachusetts corporation with a place of business in Franklin, Massachusetts.

II. FACTUAL ALLEGATIONS

5. On or about March 9, 2001, the plaintiff, Edward McCarthy, allegedly slipped and fell upon an unnatural accumulation of snow and ice.

6. Mr. McCarthy allegedly sustained injuries as a result of this accident and he has brought a lawsuit to recover damages resulting from his alleged injuries.

7. At the time of the alleged accident, the defendant Lincoln Franklin, LLC. was the owner of the premises where the accident occurred.

8. At the time of the accident All Phases Corp. was responsible for performing snow removal services for Lincoln Franklin at the property where the plaintiff allegedly fell.

9. The contract between All Phases and Lincoln Franklin provided that All Phases would hold Lincoln harmless in connection with any claims resulting from the failure of All Phases to fulfill its obligations with respect to snow removal. The contract also provided that All Phases would name Lincoln as an additional insured on any policies of insurance obtained by All Phases.

10. In his lawsuit the plaintiff claims that he is entitled to recovery from the defendant Lincoln Franklin, LLC. as a result of its negligence in performing snow removal services.

11. The defendant denies that snow removal services were performed negligently and denies that the plaintiff's injuries resulted from negligence attributable to the defendant.

12. If it is ultimately determined that snow removal services were negligently performed so as to cause the plaintiff's injuries then the defendant Lincoln Franklin would be entitled to contribution and/or indemnification from All Phases.

COUNT I CONTRIBUTION/INDEMNIFICATION

13. Assuming the plaintiff sustained injuries as alleged in his complaint, which the third party plaintiff denies, such injuries were caused by the negligence or carelessness of the third party defendant through its performance of snow removal services.

14. If the third party plaintiff is liable in tort to the plaintiff, which it denies, then the third party defendant is jointly liable in tort for the same loss. The third party plaintiff is therefore entitled to contribution from the third party defendant pursuant to the provisions of M.G.L., c. 231B.

15. If the third party plaintiff's allegations that the plaintiff's injuries resulted from the negligence of the third party defendant in connection with its performance of snow removal services, the third party plaintiff is entitled to common law indemnification from the third party defendant.

WHEREFORE, the third party plaintiff demands judgment against the third party defendant in the full amount of the third party defendants' pro rata share of the plaintiff's alleged damages, together with interest and costs, and indemnification to the fullest extent permitted by law, plus attorney's fees and costs.

JURY CLAIM

THE THIRD PARTY PLAINTIFF CLAIMS A TRIAL BY JURY ON ALL ISSUES PROPERLY TRIABLE TO A JURY.

Respectfully submitted,
LINCOLN FRANKLIN, LLC.,
By its attorneys,

/s/John P. Knight /s/Ralph C. Sullivan

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